

qualifies as an emergency in accordance with the requirements set out in section 410 of the Act.

(c) Notice to the owner shall not be required prior to entry for emergency reclamation. OSM shall make reasonable efforts to notify the owner and obtain consent prior to entry, consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical in accordance with the requirements set out in § 877.13(c) of this chapter.

## **PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER**

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AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 47 FR 28597, June 30, 1982, unless otherwise noted.

### **§ 879.1 Scope.**

This part establishes procedures for acquisition of eligible land and water resources for emergency abatement activities and reclamation purposes by you, a State or Indian tribe with an approved reclamation program which has not certified completion of coal reclamation, or by us. It also provides for the management and disposition of lands acquired by the OSM, State, or Indian tribe.

[73 FR 67641, Nov. 14, 2008]

### **§ 879.5 Definitions.**

As used in this part—

*Reclamation plan* or *State reclamation plan* means a plan that a State or Indian tribe submitted and that we approved under section 405 of SMCRA and part 884 of this chapter.

[73 FR 67641, Nov. 14, 2008]

### **§ 879.11 Land eligible for acquisition.**

(a) We may acquire land adversely affected by past coal mining practices with moneys from the Fund. If ap-

proved in advance by us, you, an uncertified State or Indian tribe, may also acquire land adversely affected by past coal mining practices with moneys from the Fund or with prior balance replacement funds provided under § 872.29 of this chapter. Our approval must be in writing, and we must make a finding that the land acquisition is necessary for successful reclamation and that—

(1) The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; and

(2) Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. For the purposes of this paragraph, “permanent facility” means any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the site that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

(b) You, an uncertified State or Indian tribe, if approved in advance by us, may acquire coal refuse disposal sites, including the coal refuse, with moneys from the Fund and with prior balance replacement funds provided under § 872.29 of this chapter. We, OSM, also may use moneys from the Fund to acquire coal refuse disposal sites, including the coal refuse.

(1) Before the approval of the acquisition, the reclamation program seeking to acquire the site will make a finding in writing that the acquisition is necessary for successful reclamation and will serve the purposes of their reclamation program.

(2) Where an emergency situation exists and a written finding as set out in § 877.14 of this chapter has been made, we may acquire lands where public ownership is necessary and will prevent recurrence of the adverse effects of past coal mining practices.

(c) Land adversely affected by past coal mining practices may be acquired by us if the acquisition is an integral

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and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements in section 407(h) of SMCRA.

(d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entryways or reclaim surface impacts of underground or surface mines may be acquired by the OSM, State, or Indian tribe if OSM finds that acquisition is necessary under part 875 of this chapter.

(e) The OSM, State, or Indian tribe which acquires land under this part shall acquire only such interests in the land as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if—

(1) The customary practices and laws of the State in which the land is located will not allow severance of such interests from the surface estate; or

(2) Such interests are necessary for the reclamation work planned or for the postreclamation use of the land; and

(3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use will not be in conflict with the reclamation to be accomplished.

[47 FR 28597, June 30, 1982, as amended at 73 FR 67641, Nov. 14, 2008]

### § 879.12 Procedures for acquisition.

(a) An appraisal of all land or interest in land to be acquired shall be obtained by the OSM, State, or Indian tribe. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for land or interests in land acquired shall reflect the fair market value of the land or interests in land as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The OSM, State, or Indian tribe which acquires land under this part shall comply, at a minimum, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, *et seq.*, and 41 CFR part 114-50.

### § 879.13 Acceptance of gifts of land.

(a) The OSM, State, or Indian tribe under an approved reclamation plan may accept donations of title to land or interests in land if the land proposed for donation meets the requirements set out in § 879.11.

(b) Offers to make a gift of land or interest in land to the U.S. Government shall be in writing and comply with U.S. Department of the Interior regulations for land donations. The States and Indian tribes may use procedures provided by applicable State or Indian tribal law.

### § 879.14 Management of acquired land.

Land acquired under this part may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the OSM, State, or Indian tribe shall provide that all user fees collected shall be deposited in the appropriate Abandoned Mine Reclamation Fund.

### § 879.15 Disposition of reclaimed land.

(a) Prior to the disposition of any land acquired under this part, OSM, State, or Indian tribe shall publish a notice of proposed land disposition, hold public hearings, if required, and make written findings in accordance with the authority contained in section 407(g)(2) of the Act.

(b) OSM may transfer administrative responsibility for land acquired by OSM to any Federal Department or Agency, with or without cost to that Department or Agency. OSM may transfer title for land acquired by OSM to any State or Indian tribe or to any agency or political subdivision of a State or Indian tribe, with or without cost to that entity, for the purposes set out in paragraphs (e) or (f) of this section. The agreement under which a transfer is made shall specify—